

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANTECH DIAGNOSTICS INC,

Plaintiff,

v.

CATHERINE GILBERTSON, DVM, et  
al.,

Defendants.

CASE NO. C14-1735 MJP

ORDER ON CROSS-MOTIONS FOR  
SUMMARY JUDGMENT

THIS MATTER comes before the Court on the Parties' cross-motions for summary judgment. (Dkt. Nos. 23, 28, 30.) Having considered the Parties' briefing and all related papers, the Court DENIES Defendants' motions to dismiss for lack of subject matter jurisdiction, GRANTS Plaintiff's motion that the contract was signed by Defendants in their individual capacities; GRANTS Plaintiff's motion that Defendants breached the contract; and GRANTS in part and DENIES in part the Parties' motions as to damages.

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**Background**

Plaintiff Antech Diagnostics, Inc., a national provider of reference laboratory services, brings suit against Defendants Catherine Gilbertson, DVM, Danielle Cook, DVM, and the Cat Clinic, LLC, asserting claims for breach of contract, unjust enrichment, and quantum meruit. (Dkt. No. 1.) Defendants Gilbertson and Cook have filed cross-claims against each other and the Cat Clinic, LLC, for, inter alia, breach of contract, indemnification, and fraud and misrepresentation. (Dkt. Nos. 7, 15, 20.)

This suit stems from a five-year exclusive laboratory services contract (the “Agreement”), in which Defendants agreed to purchase a certain quantity of veterinary laboratory services from Plaintiff per year for five years in exchange for discounted pricing and a \$20,000 loan, which would be forgiven in installments if Defendants met certain conditions. (Dkt. No. 2.)

Plaintiff alleges that Defendants breached several of the Agreement’s provisions and now seeks to recover for damages resulting from those breaches. (Dkt. No. 23.) Specifically, Plaintiff argues that Defendants breached the Agreement by ceasing to purchase laboratory services two years into the Agreement’s five-year term without having had purchased the minimum guaranteed purchase amount, and by failing to pay outstanding invoices within the time period required by the contract. (Id.)

Defendants Gilbertson and Cook filed cross-motions for summary judgment, arguing that the Agreement was between Plaintiff and the Cat Clinic, LLC, and not between Plaintiff and Defendants Gilbertson and Cook, individually, and that Plaintiff’s damages for breach of the contract are no more than \$75,000. (Dkt. Nos. 28, 30.) Defendants argue that because Plaintiff’s

1 damages fall below the amount in controversy threshold for diversity jurisdiction, Plaintiff's suit  
 2 should be dismissed for lack of subject matter jurisdiction. (Id.)

### 3 Discussion

#### 4 I. Legal Standard

##### 5 A. Summary Judgment

6 Summary judgment is proper where “the movant shows that there is no genuine issue as  
 7 to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P.  
 8 56(a). The moving party bears the initial burden of demonstrating the absence of a genuine issue  
 9 of fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). In assessing whether a party has met  
 10 its burden, the underlying evidence must be viewed in the light most favorable to the non-  
 11 moving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

#### 12 II. Subject Matter Jurisdiction

13 Defendants move for summary judgment as to the maximum amount of damages  
 14 recoverable by Plaintiff, arguing that this action should be dismissed pursuant to Fed. R. Civ. P.  
 15 12(b)(1) for lack of subject matter jurisdiction because it is a legal certainty that the maximum  
 16 amount of damages falls beneath the amount in controversy threshold for diversity jurisdiction.  
 17 (Dkt. Nos. 28 at 13-14, 30 at 10.)

18 28 U.S.C. § 1332 provides in relevant part that “[t]he district courts shall have original  
 19 jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of  
 20 \$75,000, exclusive of interest and costs, and is between—(1) citizens of different States.”  
 21 Generally, the amount in controversy is determined from the face of the pleadings, and the “sum  
 22 claimed by the plaintiff controls so long as the claim is made in good faith.” Crum v. Circus  
 23 Circus Enterprises, 231 F.3d 1129, 1131 (9th Cir. 2000). “To justify dismissal, it must appear to  
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1 a legal certainty that the claim is really for less than the jurisdictional amount.” Id. (citing  
2 Budget Rent-A-Car, Inc. v. Higashiguchi, 109 F.3d 1471, 1473 (9th Cir. 1997) (internal  
3 quotation marks omitted)).

4 A “legal certainty” exists “when a rule of law or limitation of damages would make it  
5 virtually impossible for a plaintiff to meet the amount-in-controversy requirement.” Pachinger v.  
6 MGM Grand Hotel-Las Vegas, Inc., 802 F.2d 362, 364 (9th Cir. 1986). “Only three situations  
7 clearly meet the legal certainty standard: 1) when the terms of a contract limit the plaintiff’s  
8 possible recovery; 2) when a specific rule of law or measure of damages limits the amount of  
9 damages recoverable; and 3) when independent facts show that the amount of damages was  
10 claimed merely to obtain federal court jurisdiction.” Id. (quoting 14A Charles Alan Wright,  
11 Arthur R. Miller, & Edward H. Cooper, Federal Practice and Procedure § 3702 at 48–50 (2d ed.  
12 1985)).

13 Here, Defendants Gilbertson and Cook argue the legal certainty standard is met because  
14 although Plaintiff’s complaint alleges damages of over \$130,000, the terms of the Agreement  
15 limit Plaintiff’s possible recovery through the contract’s “inherent cap on damages.” (Dkt. Nos.  
16 28 at 13-14, 44 at 8, 45.) The Court disagrees. The contract does not contain a cap on damages  
17 below the jurisdictional threshold, and it is not otherwise “virtually impossible” for Plaintiff to  
18 meet the \$75,000 requirement. (See Dkt. No. 2 at 1-5.) While Defendants calculate Plaintiff’s  
19 damages as less than \$75,000, their calculations rely on their interpretation of the contract and  
20 the surrounding facts. The Court finds that Plaintiff has made a good faith claim for damages  
21 exceeding the jurisdictional threshold and that 28 U.S.C. § 1332’s amount in controversy  
22 requirement has been met. Defendants’ motions for dismissal for lack of subject matter  
23 jurisdiction are DENIED.

1           III.     Parties to the Contract

2           The Parties next dispute whether Defendants Gilbertson and Cook entered into the  
3 Agreement with Plaintiff in their individual capacities or in their representative capacities as  
4 agents of the Cat Clinic, LLC. (Dkt. Nos. 23 at 7-11, 30 at 10-19, 33.)

5           Under California law, “the intention of the parties as expressed in the contract is the  
6 source of contractual rights and duties. A court must ascertain and give effect to this intention by  
7 determining what the parties meant by the words they used.” Pac. Gas & Elec. Co. v. G. W.  
8 Thomas Drayage & Rigging Co., 69 Cal.2d 33, 38 (1968). Where the parties disagree about the  
9 meaning of the contract, courts construe the contract using a two step process. “First, the Court  
10 must determine whether the contract is ‘ambiguous.’ Whether the contract is ‘ambiguous’ is a  
11 question of law.” Smith v. Simmons, 638 F. Supp. 2d 1180, 1193 (E.D. Cal. 2009) (citing ASP  
12 Properties Group v. Fard, Inc., 133 Cal. App. 4th 1257, 1266 (2005)). “If the language of the  
13 contract cannot reasonably be construed as a party suggests then the Court will find that the  
14 contract is not ‘ambiguous’ and the inquiry is over. If, on the other hand, the Court finds that the  
15 contract is ‘reasonably susceptible to either of the meanings urged by the parties’ then the Court  
16 ‘moves on to the second step which is to determine just what the parties intended the contract  
17 term to mean.’” Id. (citation omitted).

18           In the second step, the Court admits extrinsic evidence, if any, proffered by each party to  
19 aid in interpreting the contract. Id. If the parties submit no extrinsic evidence, or if the material  
20 extrinsic evidence is not in conflict, the Court's construction of the contract is purely a question  
21 of law. Id. If, however, the evidence presents a genuine issue of material fact, that fact issue  
22 must be resolved by a jury before the Court can interpret the contract. Id.

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1 A contract provision is ambiguous when it is capable of two or more constructions, both  
 2 of which are reasonable. Id. (citing Bay Cities Paving & Grading, Inc. v. Lawyers' Mutual Ins.  
 3 Co., 5 Cal.4th 854, 867 (1993)). Courts will not adopt a strained or absurd interpretation in order  
 4 to create an ambiguity where none exists. Id. Language in a contract must be construed in the  
 5 context of that instrument as a whole, and in the circumstances of the case, and cannot be found  
 6 to be ambiguous in the abstract. Id.

7 Plaintiff argues that the Agreement is unambiguous and reasonably susceptible to only  
 8 one interpretation: the Agreement was entered into by Gilbertson and Cook, individually. (Dkt.  
 9 Nos. 23 at 7-11, 46 at 2-8.) Therefore, Plaintiff argues, extrinsic evidence is inadmissible and  
 10 cannot be used to create ambiguity where none exists. (Id.) Defendants argue that the contract is  
 11 ambiguous as to whether Gilbertson and Cook signed as agents of the Cat Clinic, LLC, or in  
 12 their individual capacities. (Dkt. Nos. 30 at 10-18, 33 at 1-2, 38 at 2-5, 41 at 1-2.) Defendants  
 13 argue that extrinsic evidence must be admitted to interpret the contract, and that a genuine issue  
 14 of material fact created by the extrinsic evidence forecloses summary judgment on this issue.  
 15 (Id.)

16 The Court finds that the contract is unambiguous. The contract clearly states that the  
 17 agreement “is entered into by and between Antech Diagnostics (‘Antech’) and the party or  
 18 parties listed below as ‘Animal Hospital Owner(s)’ as of the Effective Date (defined below).”  
 19 (Dkt. No. 2 at 1.) The contract identifies the “Animal Hospital(s)” as the Gene Poole Memorial  
 20 Cat Clinic and the “Owner(s)” as “Dr. Cay Gilbertson, DVM & Dr. Danielle Cook, DVM.” (Id.)  
 21 Defendants Gilbertson and Cook signed the contract with their names only, without indication  
 22 that they did so in a representative capacity. (Id. at 4.) There is no mention anywhere in the  
 23 contract of the Cat Clinic, LLC, or of any agency relationship. The Court finds that the contract  
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1 is not reasonably susceptible to the interpretation that Doctors Gilbertson and Cook are not  
2 parties to the contract and the only true parties are Antech and the Cat Clinic, LLC. Because the  
3 Court finds the contract unambiguous on this issue, extrinsic evidence regarding Defendants'  
4 understanding of the contract is not properly considered. See Smith, 638 F. Supp. 2d at 1193.

5 The Court concludes that the contract was entered into by Gilbertson and Cook in their  
6 individual capacities, and therefore GRANTS Plaintiff's motion for summary judgment and  
7 DENIES Defendants' motions for summary judgment on this issue.

#### 8 IV. Beach of Contract and Damages

9 Plaintiff argues it is uncontested that Defendants breached the Agreement by failing to  
10 make timely payments for laboratory services after receiving Antech invoices and by ceasing to  
11 use Antech services two years into a five-year contract term. (Dkt. No. 23 at 1-6, 11.)

12 Defendants request that the Court deny Plaintiff's motion in full and argue that Defendants are  
13 entitled to summary judgment limiting Plaintiff's damages; Defendants do not, however, dispute  
14 that they breached the contract's requirement that invoices be paid in full within twenty days of  
15 receipt or the requirement that Defendants purchase at least \$24,000 in services per year for a  
16 period of five years. (Dkt. Nos. 28 at 6-8, 30 at 8-10, 33 at 1.) Accordingly, the Court finds that  
17 Defendants breached the Agreement, GRANTS Plaintiff's motion for summary judgment on the  
18 issue of breach, and turns to the issue of damages.

#### 19 A. Loan Repayment

20 Plaintiff argues it is undisputed that because Defendants never complied with their  
21 contractual obligation to pay invoices in full within twenty days of receipt, they are not entitled  
22 to any loan forgiveness under the terms of the Agreement. (Dkt. No. 23 at 3-6, 12.) Defendants  
23 argue that they are entitled to at least two years of loan forgiveness because they met the \$24,000  
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1 minimum annual purchase requirement for the first two years of the contract's term. (Dkt. Nos.  
2 28 at 7-8, 30 at 8-10.)

3       The Agreement provides that, as an incentive for Defendants to enter into a five-year  
4 exclusive services contract with Antech, Antech would loan Defendants \$20,000. (Dkt. No. 2 at  
5 1.) The loan was to be repaid by Defendants in annual installments of \$4,000 plus interest  
6 accrued at 6% per year, unless Defendants satisfied the Agreement's requirements for loan  
7 forgiveness for that period as set out in section 3.2 of the Agreement. (Id. at 2.) In order for any  
8 given year's loan repayment installment to be forgiven, Defendants had to have purchased at  
9 least \$24,000 in services in that year, had to have abided by the Agreement's exclusivity  
10 provisions, and had to have paid invoices "in a timely manner." (Id. at 2-3.) Section 2 of the  
11 Agreement provides that payment "in full for Laboratory Services shall be made within twenty  
12 (20) days after receipt of an Antech invoice." (Id. at 2.)

13       It is undisputed that Defendants purchased more than \$24,000 in services for the first two  
14 years of the contract's term. (See Dkt. Nos. 23, 28, 30.) It is also undisputed that Defendants  
15 did not pay all invoices in full within twenty days of receipt during any year of the contract's  
16 term. (Dkt. No. 43 at 5.) Nevertheless, Antech sent Defendants a Form 1099-MISC for debt  
17 forgiveness in the amount of \$4,000 to cover the 2012 annual loan repayment installment. (Dkt.  
18 No. 23 at 6.)

19       The Court concludes that Defendants are not entitled to any loan forgiveness under the  
20 terms of the Agreement, except for the \$4,000 already forgiven by Plaintiff. Defendants failed to  
21 pay invoices within twenty days of receipt, as is required under section 2 of the Agreement;  
22 timely payment of invoices is a prerequisite to loan forgiveness under section 3.2 of the  
23 Agreement. Defendants' argument that thirty days notice and an opportunity to cure is required  
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1 under section 3.3 before Antech can declare a loan default is unavailing: section 3.3 is an  
2 acceleration clause which provides that the entire amount of the loan will become due and owing  
3 if Antech declares a loan default, except for amounts previously forgiven. (Dkt. No. 2 at 3.)  
4 Section 3.2, not section 3.3, sets out the requirements for loan forgiveness, and the Agreement  
5 does not require Antech to forgive loan repayment installments for every year in which it does  
6 not declare a loan default.

7 Accordingly, the Court GRANTS Plaintiff's motion as to the amount owed for the loan  
8 and finds that Defendants are required to repay \$16,000 of the loan plus interest in the amount of  
9 6% per year, as provided in the Agreement.

10 B. Damages for Breach of Contract

11 Plaintiff argues it is entitled to lost profits damages in the amount of \$84,998.57, a figure  
12 arrived at by looking at the revenue received by Plaintiff from Defendants during the first years  
13 of the contract's term, calculating an annual increase in the revenue expected to be generated  
14 through the Agreement with Defendants for the remaining years in the contract's term, and then  
15 subtracting the amounts already paid by Defendants and the amount that would have been used  
16 to cover Antech's variable costs. (Dkt. No. 23 at 12-14.) Defendants argue that Plaintiff's  
17 damages are \$14,859.69, a figure arrived at by taking the contract's minimum obligation of  
18 \$120,000 in purchases and subtracting the amounts already paid to Plaintiff and the amount  
19 owed in unpaid invoices. (Dkt. Nos. 28 at 7-13, 30 at 9-10.)

20 The Court finds that Plaintiff is entitled to \$40,467.56, plus pre-judgment interest, in  
21 damages for Defendants' breach of the Agreement. The minimum guaranteed obligation under  
22 the contract is \$120,000 over the five-year term. (Dkt. No. 2 at 1.) The Court finds that  
23 \$120,000 represents Plaintiff's expectation interest, or the benefit of the bargain that full  
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performance by Defendants would have brought under the Agreement. See New West Charter Middle Sch. v. Los Angeles Unified Sch. Dist., 187 Cal. App. 4th 831, 844 (2010). The Parties agree that Defendants have already paid \$79,532.44 to Plaintiff under the Agreement. (Dkt. Nos. 28 at 11, 30 at 9, 42 at 3.) Accordingly, Plaintiff's damages are \$120,000 in expected revenue minus \$79,532.44 for amounts already paid, resulting in total damages owed of \$40,467.56 plus pre-judgment interest.

### Conclusion

The Court finds that 28 U.S.C. § 1332's amount in controversy requirement is met, and therefore DENIES Defendants' motions to dismiss for lack of subject matter jurisdiction. The Court finds that Defendants Gilbertson and Cook signed the Agreement with Plaintiff in their individual capacities, and therefore GRANTS Plaintiff's motion and DENIES Defendants' motions on this issue. The Court concludes that Defendants are not entitled to loan forgiveness under the terms of the Agreement because they failed to timely pay Antech's invoices, and therefore GRANTS Plaintiff's motion as to loan forgiveness. Finally, the Court GRANTS Defendants' motions as to Plaintiff's damages with some modification. The Court finds that Plaintiff is entitled to \$16,000, plus interest at 6% per year, as well as \$40,467.56, plus pre-judgment interest, in total damages.

The clerk is ordered to provide copies of this order to all counsel.

Dated this 19th day of November, 2015.



Marsha J. Pechman  
Chief United States District Judge